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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT AND FRED B. STEWART, ET AL., APPELLANTS,

vs.

YOSEMITE PARK AND CURRY CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED MARCH 15, 1938.

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[fol. 1]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 4165-R

YOSEMITE PARK AND CURRY CO., a Corporation, Complainant,

vs.

R. E. COLLINS, JOHN C. CORBETT, FRED E. STEWART, RAY EDGAR, HARRY B. RILEY and U. S. WEBB, Defendants

BILL OF COMPLAINT FOR INJUNCTION—Filed March 31, 1937

The complainant above-named complains of defendants and each of them and for a first cause of action alleges:

I

The complainant is a corporation organized and existing under the laws of California, having its office and principal place of business in the Northern District of California, [fol. 2] and is engaged in the operation of hotels, stores, transportation services and other business in the Yosemite National Park.

II

Defendants, other than defendant U. S. Webb, are the duly appointed, qualified and acting members of and constitute the Board of Equalization of the State of California, and as such are charged with the administration and enforcement of the Alcoholic Beverage Control Act of the State of California (Cal. Stats. 1935, Chapt. 330). Defendant U. S. Webb is the duly elected, qualified and acting Attorney-General of the State of California, and as such is, under the Constitution and Statutes of the State of California, charged with the duty of enforcing the statutes of said State.

III

Yosemite National Park is a place as to which exclusive jurisdiction was ceded to the United States of America by the State of California, by Chapter 51 of California Statutes of 1919. Said exclusive jurisdiction was accepted by the Congress of the United States by the Act of June 2,

1

1920 (41 Stats. p. 731). Said Yosemite National Park by Act of Congress has been made a part of and within the jurisdiction of the District Court of the United States for the Northern District of California.

IV

Complainant within the limits of said Yosemite National Park is engaged in the operation of hotels, stores, camps, transportation facilities and other places and facilities for the accommodation and entertainment of visitors to said Yosemite National Park under and pursuant to a contract between the complainant and the Secretary of the Interior of the United States of America dated October 1, 1932, a true copy whereof is hereto attached, marked Exhibit "A" and made a part hereof. Under and pursuant to said contract, and with the consent and approval of the Secretary of the Interior of the United States of America, complainant is engaged, within the limits of said Yosemite National Park, in the importation and sale of beer, wines and distilled spirits, hereinafter referred to as alcoholic beverages. Complainant now owns, possesses and holds within said Yosemite National Park alcoholic beverages purchased by it outside of the State of California of the cost and fair value of more than $3,000, all of which said alcoholic beverages have been acquired by complainant and are held by it solely for the purpose of sale to persons within said Yosemite National Park. In the ordinary course of its business it is necessary for the complainant from time [fol. 3] to time to purchase such alcoholic beverages, which beverages are consigned to complainant in Yosemite National Park, and there delivered to complainant. Delivery of such beverages requires transportation through the State of California. Pursuant to instructions of the Secretary of the Interior of the United States of America, complainant has not applied for and does not now possess any license or permit from the Board of Equalization of the State of California for the importation or sale of alcoholic beverages in Yosemite National Park.

V

Defendants and each of them contend and assert that said Alcoholic Beverage Control Act of the State of California applies to complainant's operations within said Yose-

mite National Park; that complainant is obligated under said Act to apply for permits for the importation and sale of such beverages; that it is subject to the conditions and limitations of said Act in respect of the character of license which can be held by any one person; that it is obligated to pay the fees and taxes imposed by said Act and is subject to the penalties thereof for the possession and sale of said beverages without compliance with the provisions of said Act. Defendants and each of them threaten to and will, unless enjoined: Enter upon the premises of complainant, seize the alcoholic beverages of complainant thereon, and cause the same to be destroyed or sold as unlawfully possessed liquor, under purported authority of said Alcoholic Beverage Control Act; seize such beverages in the course of transportation from points outside the State of California to complainant in Yosemite National Park and deprive the complainant of the use thereof; demand the rendition of reports and the keeping of accounts in the form prescribed by the Board of Equalization; and institute divers civil and criminal proceedings against complainant for alleged violation of the Alcoholic Beverage Control Act because of the failure of complainant to comply therewith.

VI

Complainant under its said contract with the Secretary of the Interior is charged with the duty of rendering all necessary facilities and services for the accommodation of visitors to the Yosemite National Park and in the conduct of said business it is necessary that complainant obtain alcoholic beverages from points without the State of California and sell the same at retail to patrons of its hotels, camps, stores and other facilities for consumption on or off the premises where sold. Said Alcoholic Beverage Control Act of California prohibits the issuing of importer's licenses to persons holding retail on-sale licenses, and vice versa. The enforcement of said Act would completely prevent performance by complainant of its said contract [fol. 4] with the Secretary of the Interior of the United States of America. Under said statute as interpreted by the courts of the State of California, wholesalers of alcoholic beverages within the State of California may not lawfully sell alcoholic beverages to complainant in the absence of a holding by complainant of a retailer's license therefor,

and complainant in the performance of its said contract with the Secretary of the Interior is unable to obtain alcoholic beverages other than from suppliers located outside the State of California. The seizure of complainant's property as threatened by defendants would prevent performance by complainant of its said contract with the Secretary of the Interior of the United States of America.

VII

The Secretary of the Interior, under and pursuant to said contract, has approved prices to be charged by complainant for alcoholic beverages sold and dispensed by it in Yosemite National Park which contain no allowance for the taxes imposed by the Alcoholic Beverage Control Act of California. Said Secretary of the Interior, through the Director of the National Park Service, has instructed complainant to refuse to apply for any license under said Alcoholic Beverage Control Act of California, or to pay any of the taxes imposed by said Act, and has notified complainant that the payment of any such licenses or taxes will not be allowed as an operating expense of complainant under its said contract.

VIII

Said Yosemite National Park is a place within the exclusive jurisdiction of the United States of America and the State of California is without power or jurisdiction to regulate or control the sale of alcoholic beverages therein; if said Alcoholic Beverage Control Act be construed as purporting to regulate business of complainant in said Yosemite National Park, the same is unconstitutional and void in that it is beyond the power and jurisdiction of the State of California to legislate in respect of complainant's business or affairs in said Yosemite National Park, and the enforcement thereof will deprive complainant of its property without due process of law.

IX

Said Alcoholic Beverage Control Act provides that violations thereof shall constitute public offenses and complainant will be subject to divers and numerous fines and penalties, and its officers, agents and employees subject to imprisonment and fine, and each separate act of violation

of said Act is specified as a separate and independent offense; unless the enforcement of said Act by defendants be enjoined as herein prayed, the complainant and its officers, [fol. 5] agents and employees will be subject to repeated prosecutions, and complainant has no speedy, adequate or any remedy at law.

X

This action arises under the Constitution and laws of the United States, to wit, under subdivision 17 of Section 8 of Article I, under Section 2 of Article IV, and under the Fourteenth Amendment to the Constitution, and under the Act of June 2, 1920 (41 Stats. 731) and amendments thereto, and the jurisdiction in this court is granted by Section 41(1) of Title 28 of the United States Code and by Section 77 of Title 16 of said United States Code.

And for a further and separate count and cause of action complainant alleges:

I

Complainant incorporates herein by reference each and all of the allegations contained in paragraphs I to X, inclusive, of its first cause of action herein stated.

II

An actual controversy exists between complainant and defendants in respect of the following matters:

Complainant contends that Yosemite National Park is within the exclusive jurisdiction of the United States of America by virtue of Chapter 51 of the Statutes of California of 1919, and the acceptance of such jurisdiction and exercise thereof by the Act of Congress of the United States of America of June 2, 1920 (41 Stats. 1931 and as amended), and that by virtue of such exclusive jurisdiction of the United States of America complainant in the conduct of its business in operating hotels, camps, stores and other facilities for the accommodation of visitors to Yosemite National Park under and pursuant to its contract with the Secretary of the Interior of the United States, is not subject to the provisions of the Alcoholic Beverage Control Act of the State of California, is not obligated to obtain any license thereunder, to pay any license fees or excise taxes thereby imposed, to render reports or keep accounts as

therein provided, and is not in any respect subject to any of the provisions of said Act in respect of transactions by complainant within said Yosemite National Park, and that it is, without any such license or permit, entitled to import into Yosemite National Park from points outside the State of California alcoholic beverages and to possess, sell and dispose of the same within said Yosemite National Park free of any interference from defendants, their officers, agents or employees, and without incurring any of the penalties or being subject to any of the regulations prescribed by said Act.

[fol. 6] Defendants contend that despite the statutes referred to in the preceding paragraph the United States is without constitutional power to exercise exclusive jurisdiction in said Yosemite National Park; that said statutes, insofar as they purport to grant to, accept or exercise such exclusive jurisdiction, are unconstitutional, and that complainant in the conduct of its said business in Yosemite National Park is nevertheless subject to all the terms and provisions of said Alcoholic Beverage Control Act and the rules and regulations prescribed thereunder, and is subject to the fines and penalties in said Act provided for failure to comply therewith in respect of such transactions.

Wherefore, complainant prays:

(1) That defendants and each of them, and the officers, agents and employees of said defendants and each of them, be restrained and enjoined

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations

of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California;

(2) That pending final hearing and determination of this action this Court grant an interlocutory injunction restraining the defendants and each of them and their respective officers, agents and employees, from doing or causing to be done any of the acts or things as to which a permanent injunction is heretofore applied for.

[fol. 7] (3) That this court enter a declaratory judgment declaring and determining that the Alcoholic Beverage Control Act of California does not apply within the limits of Yosemite National Park; that the complainant in the conduct of its business in said Yosemite National Park is not obliged to comply with said Act, to apply for or obtain any license thereunder, to pay any fees or taxes thereby imposed, to render reports or keep accounts as therein prescribed, and that complainant may lawfully and without let or hindrance of defendants or any of them import into Yosemite National Park from points outside the State of California and there possess, use, sell and dispose of alcoholic beverages, subject to the control of the Secretary of the Interior of the United States, without compliance with any of the provisions or requirements of said Alcoholic Beverage Control Act;

(4) For such other and further relief as may be meet and proper in the premises, and for costs herein incurred.

Yosemite Park and Curry Co., by Don Tresidder, Its President, Complainant.

Duly sworn to by Don Tresidder. Jurat omitted in printing.

[fol. 8] EXHIBIT "A" TO BILL OF COMPLAINT

This Agreement made and entered into this 1st day of October, 1932, by and between John H. Edwards, Assistant Secretary of the Interior, for and on behalf of the United States of America, Party of the first part, hereinafter designated as the "Secretary", and Yosemite Park and Curry Company, a corporation organized and existing under the laws of the State of California, by Don Tresidder, its President, party of the second part, hereinafter designated as the "Company".

Witnesseth:

That Whereas, said Company under an agreement entered into with the United States through its Secretary of the Interior under date of February 4, 1926, as supplemented by agreement dated July 9, 1929, has established and does now maintain and operate in the Yosemite National Park, hotels, camps, transportation service, merchandise stores, photographic service, and related accommodations and conveniences for the benefit of visitors thereto, and

Whereas, pursuant to plans of the government for better taking care of visitors in the national parks by the establishment of more modern and extended facilities therein looking for sometime to the future, outlined by the Secretary of the Interior to the various public utility operators at a conference held in Washington, D. C., on December 6 and 7, 1929, the said Company has formulated plans for improved and extended services in the Yosemite National Park, including the provision of similar services in the recent addition to the park under proclamation of the President dated August 13, 1932, and is ready and willing to conduct its operations in said park on the basis of said [fol. 9] improved and extended facilities, subject to the extension of the term of its operating contract for the full period authorized in law, namely twenty (20) years, in order to justify the total expenditure contemplated therefor, and

Whereas, the said Company has submitted to said Secretary a detailed five year program covering the various improvements and extensions contemplated and which meet with the approval of the Secretary, and

Whereas, the Secretary believes it to be in the interest of the United States and of the public visiting the park to

grant an extension of the contract term by the execution of a new contract as applied for by the Company in order that improved and extended accommodations and conveniences, according to said program, may be installed and operated in the park, and

Whereas, said Company has tendered its contract dated February 4, 1926, and supplemental agreement dated July 9, 1929, for cancellation and has made application for a new contract in lieu thereof covering a period of twenty (20) years from October 1, 1932, in consideration of the continued operation in the park and addition thereto on the basis of the said five year program of improved and extended facilities,

Now, Therefore, pursuant to the authority conferred by the Act of Congress approved October 1, 1890, (26 Stat. 650), and the Act of Congress approved August 25, 1916 (39 Stat. 535), and the acts supplemental thereto and amendatory thereof, the said parties have covenanted and agreed and by these presents do covenant and agree to and with each other, in consideration of the execution of this agreement and the performance thereof and the enjoyment of the same, to the cancellation of said agreement dated February 4, 1926, and the supplemental agreement dated July 9, 1929, and the same are hereby cancelled, and each [fol. 10] does hereby release the other from all claims, demands and reckonings thereunder, except as to compensation or franchise fees that may be due the United States at the date of the execution hereof, and for the same considerations the parties do further agree as follows:

Article I. The said Secretary hereby authorizes and empowers the Company for and during the term of twenty (20) years from October 1, 1932, under such tariff or schedule of charges as is provided in Subdivision (e) of Article VI hereof:

(a) To establish, maintain and operate a general hotel and camping business in the Yosemite National Park for the complete accommodation and entertainment of tourists and others, including hotels, chalets, inns and camps, etc.

(b) To install and operate all facilities and conveniences in connection with the operation of a general hotel and camping business for the comfort and convenience of

guests and others, including laundries, barber shops, Turkish and other baths, swimming pools, and bathhouses;

(c) To provide facilities for skating, sleighing, skiing, and other winter sports, and to operate and maintain ice skating rinks, tennis courts, golf links, pool and billiard halls, bowling alleys, and such other amusements and sports for the accommodation of tourists in the park as may be hereafter agreed upon between the parties hereto;

(d) When specifically authorized by the Secretary in writing, to establish and maintain hothouses and gardens at such points as may be designated by the Superintendent of the Park for the purpose of propagating flowers and raising vegetables, etc., to be used in supplying the services required under this contract;

[fol. 11] (e) To sell in the hotels, chalets, inns, camps, and at such other locations as may be approved by the Secretary, any and all supplies, commodities and articles not at any time or times objected to by the said Secretary, including newspapers, magazines, periodicals, guide books, maps, and other descriptive literature of the Yosemite National Park, souvenirs, paintings, photographs, photographic supplies and equipment, postcards, curios, confectionery, ice cream, soda water, soft drinks, tobacco, and other smokers supplies, and other supplies or conveniences for tourists, and to public- a magazine or newspaper or both for the information of park visitors;

(f) To operate and conduct a general photographic business including the taking of still and motion pictures of views, groups and individuals, the development and printing and sale of same; the general manufacture of any and all kinds of photographs and curios and the sale of same; development of films and the making of prints off same as offered by the public, park operators or permittees or their employees; the renting and repair of kodaks, cameras and general photographic equipment; and the exhibition of motion pictures and/or the giving of lectures for an admission charge to either or both.

Article II. The Secretary further authorizes and empowers the Company for and during the said period of twenty years;

(a) To establish, maintain and operate a general transportation service, using therefor automobiles, automobile trucks, or other proper and satisfactory means of conveyance for the accommodation of tourists, and the transportation of freight and mail to and through said park over the roads now open or which may hereafter be opened for [fol. 12] the use of motor-propelled or horse-drawn vehicles;

(b) To operate and maintain on the floor of Yosemite Valley automobile trucks or other satisfactory means of conveyance for sightseeing and express service purposes;

(c) To establish, maintain and operate in said park trail transportation facilities and furnish such other service as may be considered necessary for the transportation of tourists over the roads, trails, and bridle paths of said park;

(d) To establish, maintain and operate a lift, tramway or elevator between the floor of Yosemite Valley and the rim of said Valley in the vicinity of Glacier Point, and similar and other forms of aerial and/or incline transportation at other places in the park, if and when approved by the Secretary; Provided, However, that the said Secretary reserves the right to make special stipulations regarding compensation to the United States for this privilege; and provided that this privilege if and when exercised with the approval of the said Secretary shall be in accordance with detailed plans providing for the protection of the landscape of the Yosemite Valley from any impairment whatsoever;

(e) To maintain for hire rowboats and other water transportation facilities;

(f) To conduct in said park a general livery business including the hiring out of animals and conveyances for the transportation of tourists and others in and around the Yosemite Valley and other parts of the Yosemite National Park, and the care and stabling of animals and conveyances of other parties;

(g) To establish, maintain and operate in said park garages, gasoline and oil stations, blacksmith shops, ma- [fol. 13] chine shops, stables, corrals, hangars, aerodromes, landing fields, boat houses, boat landings, and other serv-

ices, including towing service, considered necessary by the Secretary in the operation of the transportation facilities authorized herein, and for the accommodation of tourists and other travel in and through the park;

(h) To establish, maintain and operate a general air transportation and sightseeing service in, into, through, or about the park, and to use such facilities for this purpose as may be approved by the Secretary, but this privilege shall be exercised only, if and when the Secretary shall determine that such service should be furnished for the accommodation and convenience of the public;

Article III. The Secretary further authorizes and empowers the Company for and during the said period of twenty years to establish, maintain and operate in said park general merchandise stores, and to sell therein groceries, fresh and smoked meats, food supplies of all kinds, including dairy products, dry goods, clothing, shoes, hardware, notions, tobacco supplies, toilet articles, patent medicines, and any and all other kinds of goods, wares and other merchandise not objected to by the said Secretary; to keep for renting tents, camping outfits, fishing tackle, sleds, skates, skis, footwarmers, etc., and to conduct watch and shoe repairing, clothing and laundry agencies: Provided, However, that the right to sell prescriptive drugs and hospital supplies is reserved for the officially authorized medical service in the park.

Article IV. The Secretary hereby leases to the Company for the purposes of this contract and for the term of twenty years aforesaid such pieces and parcels of land in said [fol. 14] park as may be agreed to and designated by the said Secretary in the exercise of his judgment and discretion from time to time for the erection of buildings, corrals, and other structures or improvements necessary or desirable in the proper exercise of the privilege hereby granted; To Have and to Hold the same for and during the said period subject to the following conditions:

(a) A plat and description of each site which the Company is authorized to use under this contract shall be filed in the Department of the Interior within three months of the date of the execution hereof, and shall be attached to and made a part of this contract;

(b) Additional sites the use of which may at any time be leased the Company hereunder shall be surveyed by and at the expense of the Company and a plat of each site, together with a description of the land when completed shall be attached to and form a part of this contract;

(c) The Secretary shall have the right at all times to enter upon and construct, maintain and operate roads, trails, paths, bridges, automobile parking spaces, toilet houses and other sanitary facilities, electric, telephone, telegraph, water and sewer lines over any and all of the pieces and parcels of land the use of which is granted hereunder, but not so as to destroy or interfere with the structures, buildings, and appurtenances theretofore constructed by the Company thereon;

(d) Plans, specifications, and locations of all buildings, structures or inclosures established under this contract, and all alterations therein or additions thereto shall be subject to the prior approval of the Secretary;

(e) In addition to the pieces or parcels of land leased as aforesaid, the Company shall be entitled to the exclusive [fol. 15] occupancy during the pleasure of the Secretary, of such additional areas as may be reasonably required by the Company, from time to time, for the exercise and enjoyment of the rights and privileges granted to it hereby, and as shall be approved by the Secretary. A plat and description of each such area shall be filed with the Department of the Interior and when approved by the Secretary the Company shall have, until such approval is revoked by the Secretary in writing, the right to the exclusive occupancy and enjoyment of the same; Subject, However, to the rights of the Secretary specified in sub-paragraph (c) above.

Article V. The Secretary authorizes and empowers the Company during the said period of twenty years:

(a) Under the approval of the Park Superintendent first obtained and under his supervision, to quarry sand and stone, and use dead, fallen or ripe and mature timber in the park, so far as may be necessary and as marked by the Superintendent of the park, for the construction, alteration, repair or maintenance of buildings and other structures and improvements, and dead or fallen timber for

fuel and other purposes incident to the operation of its hotels, chalets, inns, camps, etc., transportation service, and other services authorized by this contract; Provided, that all slashings must be cleared and burned to the satisfaction of the Superintendent of the park; And Provided Further that, where supervision for the utilization of such park resources is necessary, a charge to cover cost of such supervision may be made;

(b) To lay, in accordance with the plans and specifications approved by the Secretary, water supply, drains and sewer pipes, conduits and mains necessary for a proper [fol. 16] and adequate water supply, drainage and sewer systems necessary for the enjoyment of the privileges herein granted;

(c) To procure from the Secretary, at reasonable rates to be hereafter determined, water, electric lights, telephone and telegraph services at and between its hotels, chalets, inns, camps, stables, garages, etc., Provided, However, that should any such service not be satisfactory or sufficient the Company may, with the approval of the Secretary and under such regulations as may be prescribed by him, provide the same at its own expense subject to the following conditions;

(1) That all plans, appliances, and machinery to be used in connection with the privileges granted under this paragraph, as well as the location and installation thereof, must be first approved by the Secretary.

(2) That all official business of the Government over telephone or telegraph lines constructed or owned by the Company in the park shall be free.

Any surplus electric power generated under this authority and not required by the Company may be disposed of by it to other parties on the terms and conditions to be hereafter agreed upon.

(d) To keep and graze, on areas where available and as may be approved for this purpose by the Secretary, such horses and mules as may be necessary to supply and accommodate its guests and employees in the park, but no such animals may be kept or sold for the purposes of trade or commerce.

Article VI. The Company hereby covenants and agrees:

[fol. 17] (a) That it accepts and will observe the terms of this contract, and will establish, maintain and operate said hotels, chalets, inns, camps, etc., the said transportation service, the said merchandise stores, and every service incident thereto with such plant, personnel, animals and equipment, goods and commodities, and in such manner, as the Secretary shall deem in every respect satisfactory and designed to promote the object for which the park was created and established; that it will exercise th privileges hereby granted to it to use the waters of the park and to graze stock and take sand, stone and timber from the park to such extent only as may be necessary for the purposes of this contract, and so as not to mar or destroy the beauty of the natural features of the park; that in all its business relations with the public, its officers and employees will observe a strict and constant impartiality as to rates, service, and in all other respects; that there shall be no preference given on its transportation lines to any passenger over others except that based upon priority of payment or reservations; but nothing contained herein shall be construed as prohibiting special arrangements being made directly with the person or persons going through the park to cover unusual and extraordinary demands for service by special contract, subject always to the control of the Secretary;

(b) That compensation to the Secretary for the franchises and leases herein granted, covering each fiscal year, for the first ten years of the contract, commencing for the first year with the beginning of operations hereunder, and thereafter with the beginning of each fiscal year of the Company as regularly established by said Company, shall be based upon and ascertained according to the following rules:

[fol. 18] 1. The Company shall pay in cash to the Secretary, annually on or before the last day of the fiscal year of the Company, the sum of Five Thousand Dollars ($5000.00), and this payment shall be regarded as an operating expense of the Company for the fiscal year in which said payment is due.

2. The Company shall be allowed, and is hereby granted annually a priority of net profits amounting to six per

cent (6%) of the value of its investment as hereinafter defined, and it shall be allowed to declare dividends to its stockholders to the cumulative amount of this priority before making any further payment to the Secretary.

If the amount of said annual priority shall not have been earned in any year through the net profits, the allowance shall be cumulative and shall be added from the net profits of succeeding years, but neither the earned priority nor the amount unearned shall bear interest.

3. The investment of the Company upon which the aforesaid annual priority shall be computed is held to mean the entire equity of the stockholders of all classes, (namely the amount by which the assets, including expenses properly chargeable to future operations, exceed the sum of the liabilities and the customary reserves necessary to provide for accrued expenses and shrinkages of the past), as at the beginning of the fiscal year, and in addition thereto all amounts actually paid into the treasury of the Company as additional contributions of capital or assessments between the beginning of said fiscal year and the first day of July next succeeding, both inclusive but less the amount of any dividends paid to stockholders between the beginning [fol. 19] of said fiscal year and the first day of July next succeeding, both inclusive.

4. The stockholders' equity as at the beginning of operations hereunder shall be determined by the Secretary from a balance sheet to be submitted by the Company showing its assets and liabilities and capital at that date, accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. After this balance sheet shall have been approved and the stockholders' equity determined by the Secretary, the values of the assets shall not be increased excepting through actual additions of value derived from contributions of capital, from borrowings, or from earnings, excepting with the written consent of the Secretary.

5. The net gain, or net loss, for each fiscal year of the Company, by which the stockholders' equity may be increased or decreased, shall be held to mean the difference between the total income of the Company and the total expense, defined as follows: Total income shall comprise gains derived from all sources both within and without Yosemite

National Park, including interest received or accrued, gains realized from disposal of property, recovery of values previously charged as expenses or losses, and all other gains or increments realized. Total expenses shall comprise all operating, administrative and selling expenses both within and without Yosemite National Park, such as are ordinarily incurred in operation of similar lines of business, and shall specifically include maintenance or repairs to property, depreciation of property at reasonable rates based on the expected useful life of said property but without reference to the duration of this franchise; losses incurred by fire, [fol. 20] storm or other damage in excess of insurance recovered thereon; losses in excess of provisions for depreciation incurred by abandonment or disuse of buildings or property, or losses on sale of property, in compliance with requirements or consent of the Secretary; interest paid or accrued as a legal liability, including interest on bonds or debentures; insurance expenses, whether actually paid out in premiums or credited to a reserve liability account by the Company for self insurance; Provided that in the latter case the approval of the Secretary shall first be obtained both as to the nature of the insurance and the rates used; charges to operating expenses credited to a reserve account for the purpose of providing for overhauling and reconditioning of motor vehicles equipment after the close of the fiscal year; and taxes of all kinds paid or legally accrued, including estimated income taxes credited to reserves at the end of the fiscal year, Provided, However, that the right is reserved to the Secretary, in case of dispute as to any item or items of income and expense, to determine whether or not said item or items not herein specifically defined shall be included in determining the net gain or net loss for the purposes of this contract, and his decision in the premises shall be final.

6. If, after the amount of the cumulative priority shall have been paid as dividends to the stockholders, any further dividends shall be paid to the stockholders out of net profits accrued since the beginning of operations hereunder, then there shall be paid in cash to the Secretary simultaneously with such distribution an amount equal to twenty-five per cent (25%) of such further dividends so paid to the stockholders. Payments to the Secretary under this [fol. 21] clause shall be regarded as operating expenses of

the Company for the fiscal year in which said payments are respectively due.

It is expressly understood that during the first ten fiscal years of operations under this contract there shall be no further compensation due or payable to the Secretary other than the payments hereinbefore provided for, namely: (a) an annual payment of Five Thousand Dollars ($5000.00); and (b) twenty-five per cent (25%) of the amount of cash dividends paid to stockholders in excess of the amount of the cumulative six per cent (6%) priority; and that at the expiration of the tenth fiscal year there shall be no contingent liability for further compensation other than amounts found to be due and payable under the aforementioned provision; and that after the expiration of the tenth fiscal year of the Company's operations under this contract there shall be no restriction upon the distribution of the profits theretofore accumulated, whether or not the same may be in excess of the cumulative amount of the six per cent priority.

7. In order that there may be a final determination of the amounts paid as compensation during the first ten years of operations under this contract, the Company agrees that within six months after the expiration of the tenth fiscal year of operations there shall be determined, in such manner as the Secretary may prescribe, the amount of the stockholders' equity, as hereinbefore described, existing at the close of the Company's tenth fiscal year, and the amount, if any of the priority remaining unearned; and the amount of compensation, if any, due at that time to the Secretary on account of distributions to stockholders paid in excess of the cumulative priority. This determination shall be [fol. 22] considered final, both by the Company and by the Secretary, unless evidence of fraud or gross error shall thereafter be discovered which, in the opinion of the Secretary, is sufficient to require a redetermination.

(c) After the expiration of the first ten fiscal years of operations under this contract compensation to the Secretary for the franchises and leases herein granted covering each fiscal year for the remaining period of this contract, commencing with the beginning of the eleventh fiscal year of the Company's operations under this contract, and thereafter with the beginning of each fiscal year, shall be based

upon and ascertained according to the following plan, to wit:

1. The Company shall be allowed, and it is hereby granted annually for distribution to its stockholders before any compensation, except as provided in sub-paragraph (c) 4 hereunder, shall be due or payable to the Secretary, a priority of net profits amounting to six per cent (6%) of the value of its investment as hereinbefore defined for the purpose of computing the priority during the first ten years, and it shall be allowed to declare dividends to its stockholders to the cumulative amount of this priority before making any further payment to the Secretary. If the amount of said annual priority shall not have been earned in any year through the net profits, the allowance shall be cumulative and shall be added from the net profits of succeeding years, but neither the earned priority nor the amount unearned, shall bear interest. Such portion of the cumulative amount of the priority accrued during the first ten fiscal years of the Company's operations under this contract as shall remain unearned at the close of the tenth fiscal year, shall be carried forward and made a part of the cumulative [fol. 23] priority during the remaining period of this contract.

2. After such six per cent annual priority, with cumulations shall have accrued to the Company from the aggregate of net profits or gains for the portion of the second ten-year period then elapsed, less the aggregate of net losses during said period, then, if there remain at the close of any fiscal year of the Company any additional net profits or gains as defined in paragraph (b) 5 herein, an amount equal to 22½% of such additional net profits or gains, less the aggregate of sums paid to the Secretary hereunder during said period, shall be paid in cash to the Secretary on or before ninety days after the close of said fiscal year as compensation for the franchises herein granted for the fiscal year last elapsed.

It is agreed that during the second ten-year period of this contract, no sums shall be due or payable to the Secretary except as shall be determined by the following computation:

At the end of each fiscal year of said period the net profits of that and all preceding years shall be determined (by de-

ducting from the total of the net profits of all years in which there have been net profits the total of the net losses of all years in which there have been net losses), and similarly the aggregate of the allowable 6% priorities of that and all preceding years during said period shall also be determined. From the aggregate of net profits as so determined there shall be deducted the aggregate of allowable 6% priorities as so determined together with the unearned priority, if any, carried forward from the first ten-year period of this contract as heretofore provided. From the balance of net profits, if any, remaining after such deduc-
[fol. 24] tions, there shall be paid to the Secretary a sum equal to 22½% thereof, less the aggregate of all sums paid to the Secretary hereunder during the preceding years of the second ten-year period.

It is the intent of this agreement that the Secretary shall not receive during the second ten-year period as compensation hereunder, a total sum in excess of 22½% of the aggregate net profits during said period, remaining after deducting therefrom the stockholders' priority for said period, and the unearned priority, if any, carried forward from the first ten-year period, except the minimum annual guarantee of $5000.00 provided for in sub-paragraph (c) 4 hereunder.

3. The liability for such payment shall be deducted from the stockholders' equity as at the close of the fiscal year just ended, but shall not be considered an expense for purposes of computing the net profits hereunder.

4. It is expressly understood that such payments, based upon the amount of annual net profits or gains in excess of the cumulative priority, including the annual guarantee to the Secretary of $5000.00, shall be the full amount of compensation payable to the Secretary, and that if such payments shall have been made there shall exist no restriction or condition arising from the provisions of this contract upon the distribution of the remaining net profits; it being further understood that it is the intent of this agreement that the annual compensation to the Secretary during the second ten-year period shall in no fiscal year of the Company be less than $5000.00.

(d) That this contract is accepted by the Company with
[fol. 25] the knowledge that the park is intended by Congress to be preserved in its natural state, and that all private

interests shall be excluded from it, except so far as may be necessary for the accommodation of the public; that it will not use the premises leased, or any of the rights or privileges herein granted, except, and to such extent only, as may be needed and intended to be used in good faith by it in carrying out the true intent and meaning of this contract; and that it will faithfully keep, observe, enforce and obey, and require its employees and all persons under its control to keep, observe, enforce and obey, each and every provision in this contract or in any Act of Congress or any rule, order or regulation concerning the park, its use, care, management or government, or anything in it;

(e) That no charges shall be demanded or received from any person by or on behalf of the Company for any accommodation or service furnished or rendered by it or for any thing or article sold by it, except in accordance with a tariff or schedule approved by the Secretary, who shall have the power, from time to time, to make such alterations and modifications in such schedule or tariff as he may see fit, not inconsistent with a reasonable profit on the part of the Company.

(f) That its employees who come in direct contact with the public shall so far as practicable wear a uniform or badge by which they may be known and distinguished as the servants and employees of said Company; and that it will not employ or retain in its services in the park, in any capacity, or permit to remain upon any of the premises, or within any building therein mentioned or provided for, any [fol. 26] person declared by the Secretary to be unfit for such employment or otherwise objectionable;

(g) That it will maintain such accounting records as may be prescribed by the Secretary and will submit to him as soon as possible after the 31st day of November of each year an annual report, under oath, giving such details of its organization, management and operations in the park under this contract as may be prescribed by the Secretary, and such other reports as may be required from time to time by said Secretary, who shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the company;

(h) That it will furnish accommodations free of charge to employees of the Department of the Interior visiting the

park on official business relating to Yosemite National Park, and to the executive officers of the park away from their regularly assigned stations, but only upon certification by or presentation of proper credentials signed by the Secretary of the Interior, or by the Director of the National Park Service or his duly authorized representative in charge of the park; but payments made by such employees in the absence of such evidence shall be without prejudice to a refund upon later submission thereof;

(i) That it will make all reasonable arrangements necessary with the concessioner authorized by the Secretary to maintain hospital and medical service in the Yosemite National Park, for the rendition of such medical and surgical treatment as may be required by its employees in the park;

(j) That before the Secretary shall be bound by this agreement the Company shall furnish a joint and several [fol. 27] bond duly executed to the United States of America, with a satisfactory surety company to be approved by the Secretary and in such sum or amount as may be deemed by the Secretary necessary for the full protection of the Government conditioned for the faithful performance of this agreement in all its particulars by the Company.

Article VII. In case of non-payment for thirty days after it is due of the compensation to the Government as provided for herein, or in case of any other default or failure on the part of the Company to observe the provisions of this contract, the Secretary may, after sixty days' notice to the Company of the default or failure and refusal to remedy such default, declare this contract forfeited and re-enter the premises without any legal process whatever; Provided that before forfeiture is declared for such failure or default, except in the case of nonpayment of compensation to the Government hereinbefore referred to, the Company shall be given a full and fair hearing on the charges before an officer and at a place designated for that purpose by the Secretary, and it shall be entitled to twenty days' notice of the time and place of such hearing, but the Secretary alone shall have the power to determine what shall constitute a failure or default hereunder and his decision in the matter shall be final and conclusive; Provided Further that as security for the faithful performance by the Company of all its obligations under this contract and the payment to the Secretary of all

damage or claims that may result from the Company's failure to observe such obligations, the Secretary shall have at all times the first lien on all the property of the Company, and no provision herein for any specific remedy shall be [fol. 28] construed as a waiver of any other lawful remedy that would otherwise be available to the Secretary.

Article VIII. It is further agreed that if, on the expiration of this contract by limitation of time, the premises shall be leased to some one other than the Company, the latter shall be given an opportunity to be reimbursed for the reasonable value of such of its buildings, fixtures, stock equipment and other property thereon as the Secretary may, by an inspection made within six months prior to such termination, determine to be appropriate for use on said premises and in enhancement of the value thereof for hotel, inn, chalet or camp, transportation or store purposes, together with the cost plus transportation charges of all merchantable supplies on hand at the time of transfer. The value of such property shall then be ascertained by a board of three appraisers appointed as follows: at least ninety days before the expiration of this contract, each of the parties hereto shall choose one appraiser, and the two so selected shall choose a third. If they do not, within thirty days of their designation, agree upon the third appraiser, such third appraiser shall be selected by the Secretary. This board, or a majority thereof, shall within thirty days from the designation of the third member, and after an inspection of the property to be appraised and the taking of such testimony as may be adduced by the parties in interest, report their conclusions to the Secretary, who may approve, set aside or modify the same or order a new appraisal, as he may see fit. The value of such buildings and property when determined by the Secretary, whose decision in the premises shall be final, shall be paid, at the time and in the manner directed by him, to the Company hereunder by the person [fol. 29] to whom the premises are to be leased; Provided that nothing herein shall be construed as creating a claim against the United States, or shall prevent the Secretary from leasing or subletting said property and the improvements thereon in such manner and upon such terms as may be necessary for the full protection of the interests of the Government, or shall delay the surrender of the premises with all buildings, fixtures, and appurtenances thereon upon

any termination of this contract, or shall in any manner charge the Government for the use of such buildings or other property.

Article IX. It is further understood and agreed that it is the intent and purpose of this franchise contract to confer upon the Company the first preferential right to provide the facilities, accommodations and services herein authorized, and said preferential right is hereby conferred and not an exclusive or monopolistic right; and upon the request or demand of the Secretary, the said Company will, within the time fixed by said Secretary, provide new or additional facilities, accommodations or services as may be considered necessary by said Secretary for the accommodation and convenience of the public; Provided, However, that if the Company doubts the timeliness or the reasonableness of said requirement for new facilities by the Secretary, the said Company shall have sixty (60) days in which to prepare, present and argue its case, and the Secretary may, in his discretion, order hearings to be held, at such times and at such places as he may designate, for the purpose of taking testimony relating to the timeliness or reasonableness of said requirement, but the decision of the Secretary in the premises shall be final and conclusive; and Provided Further that failure, neglect or refusal by the Company [fol. 30] to comply with said requirement after such hearing and decision will render this franchise subject to forfeiture under the provisions of Article VII hereof, except that there shall be no further hearings; or the Secretary may, in his discretion, authorize other individuals, partnerships, associations or corporations to provide such facilities, accommodations and services in which event the Company shall have the option to withdraw from this contract or the operation of the particular facilities affected by said decision of the Secretary upon reasonable notice to the Secretary sufficient to permit other arrangements for the continued operation of said facilities.

Article X. No transfer or assignment of this contract or lease or any part thereof made pursuant thereto shall be valid or recognized by the Secretary unless such assignment is first approved in writing by said Secretary, and no mortgages shall be executed, or any bonds, shares of stock, or other evidences of interest in or indebtedness upon

the rights, properties, and franchises of the Company shall be issued without prior authorization in each case being obtained from the said Secretary in writing.

Article XI. It is further understood and agreed that, as far as applicable, the provisions of this agreement shall apply to any enlargement or addition to the park by the Government.

Article XII. It is further understood and agreed that the exercise of the privileges conferred by this contract shall be subject to the laws of Congress governing the park and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or provided; that wherever in this contract the Secretary of the Interior is [fol. 31] referred to, the term shall include his duly authorized representative; that in all cases where rights or privileges are granted herein in general or indefinite terms, the extent of the use of such rights or privileges by the Company shall be determined by the Secretary; and that the mention of specific restrictions, conditions and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation and control of the Secretary, which are hereby reserved over all the activities of the Company hereunder in the Yosemite National Park.

Article XIII. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Department of the Interior shall be admitted to any share of any part of this contract or derive any benefit which may arise therefrom, and the provision of Section 3741 of the Revised Statutes of the United States and Sections 114, 115 and 116 of the Codification of the Penal Laws of the United States, approved March 1, 1909, relating to contracts, shall enter into and form a part of this agreement, so far as the same may be applicable.

Article XIV. It is further understood and agreed that all of the foregoing provisions shall apply to the recent addition to the park under proclamation of the President dated August 13, 1932, but in addition thereto the following shall also apply, the particular specification whereof shall

not be deemed to limit in any way the application of the foregoing provisions to said addition;

[fol. 32] (a) The Company shall establish, maintain and operate in the aforesaid addition to the park so long as the Secretary shall require, a general hotel and camping business for the complete accommodation and entertainment of the public, conducting in connection therewith all facilities and conveniences reasonably required, including garages, grocery stores, laundries, etc. and generally maintaining and conducting the activities heretofore maintained and conducted therein.

(b) In connection with said hotel and camping business and related facilities and conveniences, the Company shall be entitled to occupy and enjoy all of the buildings, structures, improvements and fenced grazing and farming areas located in said area necessary for the purpose of providing accommodations for the public, and shall maintain and repair the same; Provided, However, that it shall not be required to restore, replace, or repair any building, structure or improvement that shall be destroyed or damaged by fire, storm, act of God or other casualty, no matter how caused, unless the same shall be required for the proper service of the public, in which case the expenditure of the Company therefor shall be an asset of the Company and shall be treated in the same manner as the expenditures mentioned in sub-paragraph (c) hereof; and Provided Further that whenever any building, structure or other improvement shall become dangerous or unnecessary or unsuitable for further use by the Company, and the Secretary shall so declare, then the Government, at its own expense, may demolish or abandon the said building, structure or other improvement.

(c) Additions to or replacements of, in whole or in part, [fol. 33] of said buildings, corrals and other structures, improvements and facilities shall become a part of the assets of the said Company, shall be included in the investment of the Company upon which the annual priority hereinbefore referred to shall be computed, shall be valued under Article VIII and shall be treated in the same manner thereunder as all other buildings and improvements constructed by the Company.

In Witness Whereof, the said parties have hereunto subscribed their names and affixed their seals (in quintuple) the day, month and year aforesaid.

John H. Edwards, Secretary of the Interior. Yosemite Park and Curry Co., by Don Tresidder, President. (Seal.)

Attest: H. H. Hoss, Secretary.

[File endorsement omitted.]

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION—Filed March 31, 1937

To the Honorable, the Judges of the District Court of the United States, in and for the Northern District of California, Southern Division:

Yosemite Park and Curry Co., a corporation, complainant herein, upon the verified bill of complaint filed herein on the 31st day of March, 1937, and upon all the papers and pleadings on file in the above-entitled matter, hereby makes application and moves:

(1) For an order enjoining and restraining, pending the final decision in this action and until the further order [fol. 35] of this Court, the defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar, Harry B. Riley and U. S. Webb, their officers, attorneys, agents, servants and employees, and any and every other person acting or claiming or assuming to act under or by virtue of any purported authority of the Alcoholic Beverage Control Act of the State of California,

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale

of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of [fol. 36] Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California;

(2) For such other and further orders and relief as the Court shall deem just and proper in the premises.

Dated: San Francisco, California, March 31, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING HEARING ON MOTION FOR INTERLOCUTORY INJUNCTION—Filed March 31, 1937

Complainant herein having applied for an interlocutory injunction in the terms prayed for in its verified bill of complaint, and it appearing that the case is one in which such motion should be made and heard pursuant to the provi-

sions of Title 28, Section 380, United States Code (formerly Section 266, Judicial Code);

Now, Therefore, it is Hereby Ordered that the defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar, Harry B. Riley and U. S. Webb appear before the [fol. 38] undersigned Judge of this District Court, and a Circuit Judge of the United States, and a District Judge of the United States (or another Circuit Judge of the United States), who shall sit to hear the matter of the issuance of said interlocutory injunction, on the 12th day of April, 1937, at 2:00 o'clock P. M., in the court room of the United States District Court aforesaid, at the United States Post Office Building at 7th and Mission Streets, in the City and County of San Francisco, State of California, and that said defendants and each of them shall then and there show cause, if any they have or either of them has, why the interlocutory injunction prayed for in said bill should not issue.

It is Further Ordered that a copy of this order, certified under the hand of the Clerk and the seal of this Court, and a copy of said bill of complaint, together with copies of any affidavits in support of said bill of complaint and of said motion for interlocutory injunction, filed with the Clerk of this Court with said bill, shall be served not less than five days before said date of hearing upon said defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar, Harry B. Riley and U. S. Webb, and upon the Honorable Frank F. Merriam, Governor of the State of California.

It is Further Ordered that, at the time and place set as aforesaid for the hearing of said motion for an interlocutory injunction, said motion shall be proceeded with in accordance with Title 28, Section 380, United States Code (formerly Section 266, Judicial Code) and the rules of practice of this Court.

Done in said Northern District of California on this 31st day of March, 1937.

Michael J. Roche, Judge.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed April 12, 1937

Come now the defendants in the above-entitled cause and move the Court to dismiss the bill of complaint filed in this cause for the reason that the said bill of complaint does not state any matter of equity entitling the plaintiff to the relief prayed for, nor are the facts sufficient to entitle the plaintiff to any relief against the defendants or either of them.

[fol. 40] Wherefore, the defendants pray the judgment of the Court whether they shall further answer, and that they be dismissed with their costs herein.

Dated April 10, 1937.

U. S. Webb, Attorney General of the State of California; Seibert L. Sefton, Deputy Attorney General, Attorneys for Defendants.

Copy received and service acknowledged this the 10th day of April, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Attorneys for Complainant.

[File endorsement omitted.]

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION FOR SUBMISSION—Filed November 18, 1937

It is Hereby Stipulated by and between the parties to the above-entitled action that the same may be submitted to the above-entitled Court, constituted in the manner provided in Section 266 of the Judicial Code (Title 28, U. S. C., Sec. 380), for final hearing and decision upon complainant's bill of complaint and defendants' motion to dismiss the same.

[fol. 42] Dated, San Francisco, California. October 28th, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Solicitors for Complainant. U. S. Webb, Attorney General, by Seibert L. Sefton Deputy, Solicitors for Defendant.

[File endorsement omitted.]

[fol. 43] In United States District Court

[Title omitted]

Decision—October 25, 1937

Defendants' motion to dismiss the complaint herein, heretofore heard and submitted, being now fully considered, and the Court having filed its written Opinion thereon, it is, in accordance with said opinion, Ordered that said motion to dismiss the complaint be and the same is hereby denied and that the motion for the issuance of a temporary injunction be and the same is hereby granted. Further ordered that the plaintiff prepare and file proposed findings of fact, conclusions of law, and a decree, pursuant to the Rules of this Court.

[fol. 44] In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed November 18, 1937

The above-entitled case coming on regularly to be heard before the Court, constituted as provided by Section 266 of the Judicial Code (Title 28, U. S. C., Sec. 380), Hon. Curtis D. Wilbur, Circuit Judge, Hon. A. F. St. Sure, District Judge, and Hon. Michael J. Roche, District Judge, presiding, and by stipulation of the parties having been [fol. 45] submitted for final decision upon the verified bill of complaint and defendants' motion to dismiss the same,

and having been argued by counsel, and the Court thereafter having filed its written opinion on motion for preliminary injunction, and the Court being fully advised in the premises, now makes the following

FINDINGS OF FACT

I

The opinion filed herein on October 25, 1937, is hereby referred to and by reference made a part of these findings.

II

Complainant is a corporation organized and existing under the laws of California.

III

Defendants, other than defendant U. S. Webb, are the duly appointed, qualified and acting members of and constitute the Board of Equalization of the State of California, and as such are charged with the administration and enforcement of the Alcoholic Beverage Control Act of the State of California (Cal. Stats. 1935, Chapt. 330). Defendant U. S. Webb is the duly elected, qualified and acting Attorney-General of the State of California, and as such is, under the Constitution and Statutes of the State of California, charged with the duty of enforcing the statutes of said State.

IV

Complainant is engaged in the sale of wine, beer and spirit-ous liquors (herein called "alcoholic beverages") at various hotels, camps and stores, all of which are located within the limits of Yosemite National Park, in the Northern District of California. The greater part of said prem- [fol. 46] ises are within the area described in the Act of June 11, 1906 (34 Stats. 831). Complainant is not engaged in the sale of alcoholic beverages except within the limits of Yosemite National Park.

V

Complainant operates in Yosemite National Park hotels, stores and camps and also other facilities for the accom-

modation of visitors to said Park under a contract dated October 1, 1932, between complainant and the Secretary of the Interior of the United States of America, a copy of which contract is attached to the bill of complaint herein as Exhibit "A" thereto. Complainant's sales of alcoholic beverages within Yosemite National Park are made pursuant to said contract and under the control of the Secretary and at prices fixed or approved by him as provided in said contract.

VI

In connection with the sale of alcoholic beverages within Yosemite National Park, complainant in the ordinary course of its business imports from places outside the State of California beer, wine and distilled spirits, and owns, possesses and holds for sale within Yosemite National Park such beverages purchased by it outside the State of California. Under instructions of the Secretary of the Interior complainant has not applied for and does not now possess any license or permit from the Board of Equalization of the State of California for the purchase or sale of alcoholic beverages in Yosemite National Park.

VII

Defendants claim and assert that complainant is subject to the terms and conditions of said Alcoholic Beverage Control Act and threaten to and will, unless restrained, [fol. 47] enter upon the premises occupied by the complainant in Yosemite National Park, and seize the alcoholic beverages of complainant therein and cause the same to be sold as unlawfully possessed liquor, under purported authority of said Alcoholic Beverage Control Act; seize such beverages in the course of transportation from points outside the State of California to complainant in Yosemite National Park; demand the rendition of reports and the keeping of accounts in the form prescribed by the Board of Equalization of the State of California, and will institute divers civil and criminal proceedings against complainant for alleged violation of the Alcoholic Beverage Control Act of California.

VIII

The seizure by defendants of alcoholic beverages held and possessed by complainant within Yosemite National Park

and the interference by defendants with the importation from points outside California into Yosemite National Park of alcoholic beverages consigned to complainant therein would interfere with and prevent compliance by complainant with the terms of its contract with the Secretary of the Interior of the United States of America.

IX

The prices fixed or approved by the Secretary of the Interior charged by complainant for alcoholic beverages sold and dispensed in Yosemite National Park contain no allowance for taxes imposed by the Alcoholic Beverage Control Act of California. The Secretary of the Interior, through the Director of the National Park Service, has notified complainant that licenses or taxes paid under said Act will not be allowed as an operating expense of com- [fol. 48] plainant for the purpose of computing payments required by said contract to be made to the United States.

X

The value of the alcoholic beverages owned and possessed by complainant within Yosemite National Park, seizure of which is threatened by defendants, exceeds the sum of $3,000.

XI

Complainant has no plain, speedy or adequate remedy at law.

XII

Complainant will suffer irreparable injury by prevention of performance of its contract with the Secretary of the Interior unless defendants are restrained from attempting to enforce said Alcoholic Beverage Control Act within Yosemite National Park and from interfering with the importation by complainant of alcoholic beverages into said Yosemite National Park.

And as

Conclusions of Law

therefrom:

I

Yosemite National Park is a place within the exclusive jurisdiction of the United States.

II

The Alcoholic Beverage Control Act of California does not apply within Yosemite National Park.

III

Within the area described in the Act of June 11, 1906, jurisdiction was ceded by California to the United States [fol. 49] without any reservation whatsoever.

IV

Within the remainder of said Yosemite National Park the powers of taxation reserved to California by the act of cession and saved to the State by the act of June 2, 1920 (41 Stats. 731) did not include the power to impose or collect the taxes purported to be levied by the Alcoholic Beverage Control Act of California.

V

Complainant is entitled to an injunction restraining defendants and each of them, their officers, agents and employees,

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

[fol. 50] (d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

VI

Complainant is entitled to a judgment declaring and determining that the Alcoholic Beverage Control Act of California does not apply within the limits of Yosemite National Park; that the complainant in the conduct of its business in said Yosemite National Park is not obliged to comply with said Act, to apply for or obtain any license thereunder, to pay any fees or taxes thereby imposed, to render reports or keep accounts as therein prescribed, and that complainant may lawfully and without let or hindrance of defendants or any of them import into Yosemite National Park from points outside the State of California and there possess, use, sell and dispose of alcoholic beverages, subject to the control of the Secretary of the Interior of the United States, without compliance with any of the provisions or requirements of said Alcoholic Beverage Control Act.

Dated November 9th, 1937.

Curtis D. Wilbur, United States Circuit Judge. Michal J. Roche, United States District Judge. A. F. St. Sure, United States District Judge.

Approved as to form as provided in Rule 22.

U. S. Webb, Attorney General, by Seibert L. Sefton, Deputy, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 4165-R

YOSEMITE PARK AND CURRY CO., a Corporation, Complainant,

vs.

R. E. COLLINS, JOHN C. CORBETT, FRED E. STEWART, RAY EDGAR, HARRY B. RILEY and U. S. WEBB, Defendants

FINAL DECREE—Filed November 18, 1937

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, the Court having heretofore made and caused to be filed its written Findings of Fact and Conclusions of Law, it was and is ordered, adjudged and decreed as follows, viz:

I

That the Alcoholic Beverage Control Act of the State of California (Cal. Stats. 1935, Chapt. 330, and amendments [fol. 52] thereto) is not applicable within the limits of Yosemite National Park.

II

That defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar and Harry B. Riley, as members of and constituting the Board of Equalization of the State of California, and defendant U. S. Webb, Attorney-General of the State of California, and their respective successors in office, and their officers, agents, attorneys, servants, and employees, and every other person acting, or claiming or assuming to act, under or by virtue of the authority of the defendants, or any of them, be and they are, and each of them is, hereby permanently enjoined and restrained

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale

of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite Na-
[fol. 53] tional Park;

(d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

III

That complainant have and recover judgment against defendants for its costs of suit herein incurred, taxed in the sum of — Dollars.

Dated Nov. 17, 1937.

Curtis D. Wilbur, United States Circuit Judge.
Michal J. Roche, United States District Judge.
A. F. St. Sure, United States District Judge.

Approved as to form as provided in Rule 22.

U. S. Webb, Attorney General, by Seibert L. Sefton, Deputy, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 54] In United States District Court, Northern District of California, Southern Division

In Equity. No. 4165

Yosemite Park and Curry Co., a Corporation, Plaintiff,

v.

R. E. Collins et al. (State Board of Equalization of the State of California), Defendants

Before Wilbur, Circuit Judge, and St. Sure and Roche, District Judges

Opinion

Roche, District Judge:

The question in this case deals with the applicability of the "Alcoholic Beverage Control Act of the State of California" [1] in all its taxing, licensing and policing provisions, to the Yosemite National Park located within the territorial limits of California.

The answer depends upon the respective jurisdictions of the State and the United States over the Park, and this in turn revolves around the methods by which, and the extent to which, the federal government may acquire jurisdiction of lands ceded to it by states for national park purposes. The Supreme Court in Arlington v. Fant, 278 U. S. 439, 454, characterized the question as novel, saying:

"This issue may in the future become a subject of constitutional controversy, because some twenty or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by act of cession of the State. We do not find it necessary, however, now to examine this question."

Briefly, the Beverage Control Act is a complete liquor regulation measure for California.[1] It provides for various licensing fees of importers, retailers and wholesalers. It has a schedule of excise taxes applicable to the sale of different types of liquors and wines and beers. It has definite

[1] 1935 Cal. Stats. Ch. 330.

provisions for the areas within which liquor may be sold. It gives state officers the right to prescribe the accounting and bookkeeping systems which dealers in liquors must use. It enables the State Board of Equalization, which administers the Act, to require liquor dealers to obtain the endorsement of a certain number of property owners in the area where the dealers are to be licensed, and to furnish bond for security of tax collection. It has also many other features which make it extremely comprehensive and which give the State Board of Equalization complete regulatory power.

Plaintiff, the Yosemite Park and Curry Company, is seeking to enjoin the State Board of Equalization and the State Attorney General from enforcing the Beverage Control Act within the Park. Plaintiff is engaged in the operation of hotels, camps, stores, transportation facilities, utilities and other businesses within the Park. There is a contract between the plaintiff and the Secretary of the Interior leasing portions of the Park to plaintiff for a twenty year term. The intent of the contract is to carry out the Congressional desire to make the Park a resort and playground for the benefit of the public (Contract Art. VI(d).). The contract places upon plaintiff the duty of furnishing the aforementioned facilities for the accommodation of visitors in the Park. A part of such duty is the sale of liquors, beers and wines to Park visitors. It is in respect to these alcoholic beverages that the State threatens to take action under its Beverage Control Act. The prices which plaintiff can charge can be established only with the approval of the Secretary of the Interior (Contract Art. VI(e).) Plaintiff is limited to an annual six per cent cumulative return upon its investment (Contract Art. VI(b)2). It must pay to the Secretary of the Interior $5,000 a year as rent for [fol. 55] the first ten years (Contract Art. VI(b)1). If it earns more than six per cent and declares excess dividends, twenty-five per cent of the amount so declared must go to the Secretary of the Interior (Contract Art. VI(b)6). During the second ten years, plaintiff is excused from the $5,000 payments and need only pay twenty-two and one-half per cent of its excess dividends to the Secretary (Contract Art. VI(c)).

Before further detailing the facts of the case, it is necessary to point out that the Park consists of Yosemite Valley

plus a great amount of surrounding territory. The Valley has been the subject of statutory cessions different from the balance of the Park (hereafter called the Park as distinguished from the Valley). We therefore shall consider separately the problems presented by the two cessions.

First

The Valley

All of the area in question, including the entire territory comprising California and many western states, was acquired by the United States from Mexico in 1848 by the Treaty of Guadalupe Hidalgo.[2] California was admitted to statehood in 1850, the United States reserving its proprietary rights to the Valley and other unappropriated public lands,[3] Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 50 C. J. 887. The Congress gave the Valley to California in trust for public park and recreational purposes June 30, 1864,[4] thus relinquishing the previously reserved federal proprietary rights. In 1891 California enacted a law[5] reading:

"The State * * * hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may hereafter be ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein."

By Act of March 3, 1905, the California Legislature did:

"* * * hereby recede and regrant unto the United States of America * * * the Yosemite Valley * * * and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted * * *" for public park purposes.

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[2] 9 Stats. 922.

[3] 9 Stats. 452.

[4] 13 Stats. 325.

[5] 1891 Cal. Stats. 262.

The statute further provided:

"* * * the same to be held for all time by the United States of America for public use, resort and recreation."

The United States by Act of June 11, 1906,[6] accepted the regrant. There are no other statutes pertaining to the Valley, other than the California statute of 1919, hereinafter referred to, ceding jurisdiction to the federal government over the entire Park which includes the Valley.

The problem now arises, do the recited facts show that exclusive jurisdiction of the Valley is vested in the United States? If they do, of course the State has no right to enforce its liquor laws therein.

We hold that the United States has exclusive jurisdiction of the Valley.

(1) In reference to the statutes granting the Valley to the State and regranting it to the United States, the defendants state at page five of their opening brief:

"But neither of these acts granted territorial or governmental jurisdiction to the grantee and so may be disregarded."

We agree that the United States had only a proprietary interest in the Valley and that no jurisdiction passed from [fol. 56] the United States to California or vice versa by virtue of the Acts of 1864 and 1905 alone. That much is conceded by plaintiff and by the United States. But we are inclined to heed these statutes, for they have a further significance.

The State regranting act of 1905 taken in conjunction with the California statute of 1891 generally ceding exclusive jurisdiction to the United States in all cases of transfer of land, establishes beyond a doubt that exclusive jurisdiction of the Valley is now in the United States.

(2) The State contends that regardless of what has been said, the State Legislature had no power to give up its taxing authority over the Valley. There is no federal constitutional prohibition against such a relinquishment. No State measure forbidding the transfer of jurisdiction has

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[6] 34 Stats. 831.

been cited to us. On the contrary, section 33 of the California Political Code provides for such transfers. What is relied upon is a California constitutional provision forbidding the giving away of the taxing power.[7] In Yellowstone etc. Co. v. Gallatin County, (C. C. A. 9) 31 F. 2d 644, a similar argument was examined and found to be without merit. Defendants have simply misapplied a general rule of state sovereignty to a situation in which the principal issue of territorial jurisdiction controls the right to tax. The Supreme Court, in Standard Oil Co. v. California, 291 U. S. 242, considered the effect of a cession of exclusive jurisdiction over the Presidio in San Francisco by the State to the United States. It was held that the State's right to tax also had been ceded.

(3) It is further argued on behalf of the State that the United States had no power under which it could obtain exclusive jurisdiction of the Valley when the Valley was not purchased with the consent of the State, and was not to be used for the Erection of Forts, Magazines, Arsenals, Dock-Yards and other needful Buildings * * *" as specified in Article I, Section 8, Clause 17 of the federal constitution. It is said in defendants' opening brief (p. 6) that the only manner mentioned in the Constitution for the United States to obtain exclusive jurisdiction of land by the acquisition thereof alone, is that set forth in the quoted clause. The proposition can be conceded, but is far from controlling. We may further concede the next statement made, that when the federal government acquires land and jurisdiction thereof in any other way than that outlined in Article I, Section 8, Clause 17 (in this case by cession), for the purposes mentioned in that clause, the State can make any reservation of jurisdiction it deems desirable short of imposing any conditions inconsistent with the use the United States desires to make of the territory. By the same token, the State can grant exclusive jurisdiction if it fails to impose conditions. As far as the Valley is concerned, that is exactly what occurred. It is sufficient to cite Standard Oil Co. v. California, above, and Arlington v. Fant, above, to the effect that exclusive jurisdiction can be obtained by the United States upon cession of land by a state and without purchase by the United States with the

[7] Cal. Const. Art. XIII, Sec. 6.

consent of the State where the use is one set out in Article I, Section 8, Clause 17.

It is thus seen that the only question involved is whether a State's cession of exclusive jurisdiction to the United States of land used for park or other purposes not enumerated in Article I, Section 8, Clause 17, can be accepted by the latter. And defendants' argument in its essence is that such a procedure is impossible because park purposes are not mentioned in the quoted clause. Defendants' position is not sound. Moreover, it is unsupported by the authorities.

First, there is no constitutional prohibition against states ceding territory or jurisdiction to the United States, nor any constitutional mandate placing the power to cede state territory in the federal government. Therefore such a power, being an inherent incident of sovereignty, must reside in the states, subject to the limitation, immaterial here, of denying a state the right to cede territory to foreign nations without consent of the Congress (Fort Leavenworth R. R. Co. v. Lowe, above).

Second, the power to acquire jurisdiction by treaty, war, discovery or cession, is an attribute of any sovereignty, [fol. 57] whether it be a limited one or not. Jones v. U. S., 137 U. S. 202 at 212.

Third, altho the United States has no express power to accept even limited jurisdiction over ceded territory—yet defendants concede such power, and the courts and history sustain it. Benson v. U. S., 146 U. S. 325, 330. Nor can express constitutional permission to accept exclusive jurisdiction by means other than purchase with state consent be found; yet other methods have been sanctioned by practice and the Supreme Court. Standard Oil Co. v. California, above; U. S. v. Unzeuta, 281 U. S. 138.

Fourth, in Chicago etc. Ry. v. McGlinn, 114 U. S. 542 at 546, we find the court saying:

"• • • it is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers • • • such jurisdiction necessarily ending when the places ceased to be used for such purposes."

We do not believe that it can be denied that the federal government is here exercising a proper governmental function. Under U. S. v. Butler, 297 U. S. 1, it could tax to raise money to buy parks under the "general welfare" clause.[8] Park and recreational facilities clearly provide for the general welfare. Likewise, it has never been hinted even remotely that the federal government did not have the power under Article IV, Section 3, Clause 2 to provide for the establishment of parks on land the United States had already acquired, whether by conquest, cession or purchase. We therefore think that the federal government could accept jurisdiction under the McGlinn case doctrine. Yellowstone Park Transportation Co. v. Gallatin Co., above; Rainier National Park v. Martin, 18 F. Supp. 481 lend further support to this view.

For the foregoing reasons it is concluded that the United States can and did accept exclusive jurisdiction over the Valley for park purposes.

(4) We turn then to the problem of whether or not the Twenty-First Amendment permits the State to tax liquor within the Valley. That amendment says:

"The transportation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Defendants would have us hold that so long as such land is "territorially" within the state, it is immaterial that such land is beyond the jurisdiction of the state, so far as this amendment is concerned. It is argued:

"* * * the 21st amendment which deals solely with states, territories and possessions of the United States, can only relate to these places territorially and not politically. There is no suggestion in the 21st amendment there were to be areas within states over which such states could not control intoxicating liquors."

We are not convinced that the Twenty-First Amendment serves to extend to states a grant of jurisdiction over terri-

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[8] Const. Art. I, Sec. 8, Cl. 1.

tories which formerly they could not control. There is nothing in the Amendment to indicate such a purpose, any more than there is to indicate a granting of power to California to tax liquor sales and traffic in Oregon, which clearly would be absurd. Once a state relinquishes its jurisdiction over territory within its limits, its power over that particular land is gone absolutely. Standard Oil Co. v. California, above. A state's right to tax liquor is a matter of power and jurisdiction. While the Amendment may have increased the state's power to deal with the problem (see State Board v. Young's Market, 299 U. S. 59), it did not increase its jurisdiction.

Defendants, by analogy to State Board v. Young's Market, above, proposed to interpret the Twenty-First Amendment in such a way as to modify normal federal powers of sovereignty insofar as liquor regulation is concerned. In the Young's Market case it was held that a beer importer's license fee of $500 imposed by the State of California was not violative of the Commerce Clause or the Equal Protec- [fol. 58] tion Clause of the Fourteenth Amendment. The Supreme Court pointed out that as the Twenty-First Amendment prohibited the "Importation" into a state of intoxicants in violation of the laws thereof, the Commerce Clause to that extent was necessarily and explicitly overruled; and that any classification permitted by the Twenty-First Amendment could not be violative of the Fourteenth.

We think it is straining the Youngs Market case too much to try to apply it to the present controversy where the facts and constitutional provisions involved are so widely divergent. No intent to relinquish the exclusive jurisdiction of the government to the states can fairly be deduced. Fort Leavenworth R. R. Co. v. Lowe, above.

(5) The State having no jurisdiction within the Valley, it is immaterial whether the plaintiff is or is not a federal instrumentality—in either case the taxing power of California cannot reach it. Similarly, the cases in which the federal government has been permitted to tax state-owned and controlled liquor establishments, and which defendants contend justify a state tax on national liquor agencies, are not in point because the State has no jurisdiction whatsoever within the Valley. Thus South Carolina v. U. S., 199 U. S. 437 and like decisions have no bearing on the principal case.

Second

The Park Outside of the Valley

When in 1890 the United States set aside certain of its public lands to establish the Park,[9] the federal interest was merely proprietary. Jurisdiction of the lands comprising the Park was in the State, where it remained until 1919. In that year jurisdiction of the Park was offered to the National Government, which had always retained the proprietary interest:[10]

"Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the Territory which is now or may hereafter be included in * * * 'Yosemite National Park' * * *; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to tax and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

By Act of June 2, 1920,[11] jurisdiction of the Park was assumed by the United States. The acceptance statute, referring to the provisions of the California Act, said:

"* * * are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California."

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[9] 26 Stats. 650.

[10] 1919 Cal. Stats. 51.

[11] 41 Stats. 731, 17 U. S. C. A. 57.

The reservations in the California statute were then set out verbatim. None of these statutes referred to or affected the Valley.

(1) What was said about the Valley in relation to the power of California to relinquish its taxing authority over territory ceded to the United States, is equally applicable to the Park. Hence, any voluntary disposal of taxing power in the Park would be valid. We believe, likewise, that what has been said previously in regard to the Twenty-first Amendment is also conclusive as to the Park.

(2) Next we approach the problem of the power of the United States to accept jurisdiction of the Park for recrea- [fol. 59] tional purposes. Since we have held, in our study of the Valley, that exclusive jurisdiction can be obtained, it follows that any lesser quantum of jurisdiction can also be accepted. Fort Leavenworth R. R. Co. v. Lowe, above. Under principles established in the Lowe case and reiterated in Arlington v. Fant, above, the state, in ceding jurisdiction, may impose any conditions or withhold any amount of jurisdiction it desires so long as such reservations do not interfere with the use to which the United States wishes to put the property. In relation to the Park, the State of California had the right to reserve taxing power, not inconsistent with the federal governmental use.

(3) We now pass to a consideration of the taxing power reserved by the State in the Act of 1919 granting jurisdiction of the Park to the United States, and confirmed by the United States in its acceptance statute of 1920.

Reference must be made to the case of Rainier National Park Co. v. Martin (D. C. Wash. 3 Judges), above, in which similar statutes on the same subject gave rise to a problem closely resembling that involved in the case at bar. Despite the surface similarity of issues, we believe it is possible to distinguish the two cases on at least one important point.

In the Washington case a divided court held that the federal government had consented to the levy of an excise tax on the Rainier National Park Company, which was assumed to be a federal instrumentality. Since the clause which led to this interpretation is the same as the saving clause in the federal acceptance of the California grant, it is important to investigate the reason which persuaded the

court to hold as it did. Complete reliance was placed on the case of Mid-Northern Oil Co. v. Walker, 268 U. S. 45, which the majority of the court felt to be controlling. What does an examination of that case reveal? A license tax, measured by the total gross value of crude oil produced, was imposed by the State of Montana on a federal instrumentality engaged in mining. The tax was levied under a statute which saved to the state "the right to levy and collect taxes upon improvements, output of mines, *or other rights*, property or assets of any lessee of the United States." (Italics ours.) Clearly the statute included in its broad language the very tax which the state was collecting. But should such a case control one in which the tax reservation says that the state saves "the right to tax persons and corporations, their franchises and property"? We believe that the answer is "no." The former broad clause covers a license tax; the latter does not. We think that the Washington interpretation of that clause is a strained one, and cannot be applied to the facts of this case.

But granting that the District Court was correct in its ruling, we wish to point out two distinctions between the Washington case and the principal case which we feel should sustain a different holding. In the first place, the California statute differs from the Washington measure of 1901[12] in one important detail. In ceding Yosemite National Park to the federal government, California retained "the right to fix and collect license fees for fishing in said Park." Such an express reservation of the right to collect license fees for one purpose is an indication that the right to collect license fees for all other purposes was renounced. The Washington statute, on the other hand, contains no such reservation.

In the second place—and of fundamental significance—we feel that the nature of the California license tax is sufficiently different from that of the Washington business tax to warrant a different ruling. The California enactment is chiefly regulatory in nature, and is confined to the liquor business; the Washington statute is a revenue measure which covers innumerable trades. While a revenue measure does not preclude the possibility of a clash be-

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[12] 1901 Session Laws, c. 92, p. 192, § 1.

tween sovereignties, it does not invite one as a regulatory measure does. California has ceded the Park to the United States, which had agreed to police it. Now, by reason of the Alcoholic Beverage Control Act, California evidently claims the retention of her police power. Such a claim is violative of the police jurisdiction placed in the hands of the National Government, and is void.

Since the primary purpose of California's tax measure is the regulation of the intoxicating liquor business; since such regulation constitutes an exercise of the police power [fols. 60-64] which is beyond the jurisdiction of the State, the measure cannot bestow upon California the power to collect license taxes from plaintiff for the importation and sale of liquors.

The motion to dismiss the complaint is denied; the motion for the issuance of a temporary injunction will be granted. Plaintiff will prepare and file proposed findings of fact, conclusions of law, and decree.

Curtis D. Wilbur, Judge, U. S. Circuit Court of Appeals. Michael J. Roche, U. S. District Judge. A. F. St. Sure, U. S. District Judge.

[fols. 65-76] In United States District Court

[Title omitted]

Order Allowing Appeal and Fixing Bond—Filed January 18, 1938

Appeal allowed as prayed, and issuance of citation ordered, returnable within sixty days from the date hereof; defendants to give a bond, with good and sufficient security, in the sum of One Hundred Dollars ($100.00) that they, as appellants, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make good their plea.

Dated January 17th, 1938.

Michael J. Roche, Judge of the District Court. A. F. St. Sure, Judge of the Distict Court. Curtis D. Wilbur, Judge of the Circuit Court of Appeals.

Approved as to form as provided in Rule 22. Amount of bond also approved.

Brobeck, Phleger & Harrison, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 77] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED AND STIPULATION RE TRANSCRIPT ON APPEAL—Filed March 15, 1938

Come now the appellants in the above entitled cause and in support of their appeal hereby file their definite statement of the points on which they intend to rely and hereby state such points to be as follows:

Statement of Points to be Relied Upon

That the District Court of the United States, in and for the Northern District of California, Southern Division, erred in the following respects:

(1) In deciding and holding that the Alcoholic Beverage Control Act of the State of California (California Statutes [fol. 78] 1935, Chapter 330, and amendments thereto) was not applicable within the limits of Yosemite National Park;

(2) In enjoining and restraining defendants, R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar and Harry B. Riley, as members of and constituting the Board of Equalization of the State of California, and defendant, U. S. Webb, Attorney General of the State of California, and their respective successors in office, and their officers, agents, attorneys, servants, and employees, and every other person acting, or claiming or assuming to act, under or by virtue of the authority of the defendants, or any of them (a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park; (b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California; (c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alco-

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holic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park; (d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park; and (e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of [fol. 79] transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

(3) In not granting defendants' motion to dismiss the bill of complaint for an injunction.

Designation of Parts of Record to be Printed

The appellants further state that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the cause:

Title of Paper	Record Page
1. Bill in equity for injunction	
2. Motion for interlocutory injunction	
3. Order setting hearing on motion for interlocutory injunction	
4. Motion to dismiss	
5. Stipulation for submission	
5a. Findings of fact, & conclusions of law	
6. Final decree	
7. Opinion	
8. Statement of Points to be relied upon and designation of record	
9. Stipulation re printing of record	
10. Stipulation re transcript on appeal	

Dated December 31, 1937.

U. S. Webb, Attorney General of the State of California, by Seibert L. Sefton, Deputy Attorney General.

STIPULATION RE TRANSCRIPT ON APPEAL

Appellee hereby waives any designation by it of additional parts of the record to be printed herein, and does hereby consent to the hearing of the above entitled cause

on the foregoing parts of the record designated by appellants.

Dated December 31, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Attorneys for Appellee.

[fol. 80] IN SUPREME COURT OF THE UNITED STATES

STIPULATION IN RE PRINTING OF RECORD—Filed March 15, 1938

It is Hereby Stipulated by and between the above named appellants and appellee, through their respective counsel of record herein that

Whereas the Alcoholic Beverage Control Act of the State of California (Chapter 330, Statutes 1935, as amended), has been heretofore printed in full in the Statement as to Jurisdiction filed herein, that the same need not be reprinted in the record on appeal herein but that wherever in such record the said act appears reference may be made thereto and the fact noted that the same appears in full in said Statement as to Jurisdiction, or in such other manner as the Clerk of [fol. 81] the above entitled Court may designate.

Dated December 31, 1937.

U. S. Webb, Attorney General of the State of California, by Seibert L. Sefton, Deputy Attorney General, Attorneys for Appellants. Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Attorneys for Appellee.

[fol. 82] [File endorsement omitted.]

Endorsed on cover: Enter U. S. Webb. File No. 42,351. N. California, D. C. U. S. Term No. 870. R. E. Collins, John C. Corbett and Fred B. Stewart, et al., appellants, vs. Yosemite Park and Curry Co. Filed March 15, 1938. Term No. 870, O. T., 1937.